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January 11, 2007

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Ex Parte No. 646 (Sub No. 1), *Rail Rate Challenges in Small Cases*

Dear Secretary Williams:

I am submitting this letter on behalf of E.I. du Pont de Nemours and Company ("DuPont") in the above-referenced rulemaking to express our concerns with several aspects of the Board's proposals. To date, we have participated in this proceeding through our trade association. We have certain concerns that are so strong, however, that we desire to emphasize them directly to the Board.

The need for meaningful regulatory protection against unreasonable rates on our captive rail traffic is critical. This need has become more urgent as capacity constraints are allowing railroads to impose sizeable rate increases on rail traffic. While the railroads claim that this is the result of the market at work, the rail industry lacks the competitiveness that is necessary for the efficient functioning of a truly free market.

The Board has proposed eligibility thresholds for small rate cases that are entirely unrealistic. For example, the Board would require all cases with a maximum value of $3.5 million over 5 years to use the stand-alone cost (SAC) approach that applies to large coal rate cases. But $3.5 million also is the estimate of the costs just to litigate a SAC case. No shipper will bring a rate challenge when its best-case scenario is merely to break-even. All of the proposed eligibility standards need to be raised significantly, and a reasonable litigation cost estimate should be multiplied by a risk factor of three to obtain a realistic eligibility threshold.

The Board's proposal to adopt a new small case approach called Simplified-SAC, or "SSAC," is very troubling. The Board required ten years to develop the existing three-benchmark approach, and it has taken ten more years for it to respond to shipper calls for more clarity in that approach. But instead of fixing the current three-benchmark approach, the Board has proposed SSAC as an entirely new, more complex, more costly, and more time-consuming approach that would replace the three-benchmark approach for the large majority of small cases.

The complexity of SSAC is evident in the number of pages required merely to outline the approach in the Notice of Proposed Rulemaking. Even then, many significant substantive and

procedural questions remain unanswered. These uncertainties will chill any future rate challenges.

Furthermore, the Board has allotted 18 months to litigate an SSAC case, which seems unrealistically short for such a complex approach. But, even 18 months is far too long for SSAC to be of any benefit to us. We must make business decisions in a much shorter time frame. Moreover, since the rail rate often can be the difference as to whether or not certain business is profitable, we cannot afford to pay an unreasonable rate for 18 months with the lingering uncertainty whether any rate relief will be granted, and if so, at what level.

Although the Board's proposed modifications to the three-benchmark approach take a major step towards providing shippers with their long-requested clarifications, the railroads would gut those improvements by imposing unnecessary restrictions on the identification of "comparable" traffic under the three-benchmark approach. Most significantly, they advocate the automatic exclusion of all contract traffic, which they contend is not "comparable" to traffic that moves under tariff. However, in our experience that is not true. We have commodities that move under both contract and tariff rates and there is very little, if any, difference in nature of or demand for the transportation or the service provided. Whether or not contract traffic is "comparable" should be a case-by-case determination.

DuPont strongly urges the Board to abandon its SSAC proposal and to focus on its proposed refinements to the three-benchmark approach. Adoption of SSAC would leave small case shippers in a worse position than exists today, a result that is completely at odds with the purpose of this rulemaking. Finally, the eligibility thresholds must be adjusted to more realistic levels before any small case approach can be effective.

Respectfully submitted,

Mary L. Pileggi
E.I. du Pont de Nemours and Company

cc: All parties of record